



April 22, 2020

Civil and Human Rights Are Essential and Our Courts Must Meet This Moment

Dear Court Officials,

Civil and human rights, laws, and protections must be recognized — especially during a pandemic. Our courts and policymakers must ensure that our rights and protections are not abridged and that our democracy works for all of us. Already, we have seen this moment be exploited to roll back civil and human rights, including disenfranchising predominantly Black and Brown communities, banning essential and time-sensitive health care access for those seeking abortion care, targeting immigrants, stoking anti-Asian hatred, and dehumanizing the LGBTQ community, among other violations. How the judiciary responds to this crisis will determine how we emerge from it. The future depends on our decisions today. The courts are vital to ensure that civil and human rights and our very democracy do not become casualties of this virus.

On behalf of The Leadership Conference on Civil and Human Rights' Fair Courts Task Force and the 42 undersigned organizations, we write to outline these principles for federal, state, and local courts.

I. Civil and Human Rights Are Essential.

While vital and often extraordinary measures must be taken to ensure public safety, these efforts are not at odds with — and should never be used to undermine — our civil and human rights.

Every day, judges decide issues of critical, sometimes lifesaving, importance. People seek legal assistance, often requiring the involvement of the courts for matters related to health care, employment, housing, immigrant justice, protection against domestic violence, and so much more. The administration of justice and protection of our rights are imperative, especially during a pandemic. While many courts have changed operations to address this public health crisis, they must continue to function and provide safe and expansive access to justice so people can seek redress as they face unprecedented challenges caused by the current crisis. Furthermore, members of the public must be able to easily seek emergency relief as the pandemic is likely to produce urgent conditions where rights are at stake and immediate redress is needed. Judges must recognize and prioritize the protection of civil and human rights — and reject any efforts to undercut or undermine them.

II. Public Health and Safety Demands Care for All.

During this pandemic, our nation must protect all people, including people in jails, prisons, and immigration detention facilities, who face life threatening lack of sanitation, crowded spaces, limited medical resources, and high prevalence of chronic health conditions. These conditions effectively create a virus tinderbox, as we have already witnessed. When possible, courts must take deliberate action to decarcerate jails and corrections and detention facilities. They must also uphold protections for people

who are incarcerated and detained, their families, and facilities' staff — and, inextricably, their communities and the public.

When legally appropriate, judges can support the categorical release of a significant portion of people currently incarcerated or detained in jails, halt new admissions to jails, and start removing youth from juvenile detention and correctional facilities. In addition, to the extent possible, judges should seek to discharge or end the collection of, stop the issuance and enforcement of warrants for, and release individuals arrested for all outstanding fines, fees, court debt, and related offenses.

When it is within their legal authority, courts should ensure that people who remain incarcerated or detained have access to proper hygiene and medical care (including an end to medical co-pays), communications home, and regular contact with their legal teams and court proceedings. Courts should implement processes to protect people's due process rights, while taking measures to enforce social distancing to protect the health and safety of everyone involved.

In the specific instance of refugees, asylees, and immigrants, courts must apply both civil and human rights laws. When legally appropriate, courts must mandate that refugees not be turned away from our country, and instead should call for the Department of Homeland Security to conduct credible fear interviews as soon as possible. Moreover, asylees and immigrants waiting for their cases to be adjudicated should be categorically released without delay unless the individual is determined, by clear and convincing evidence, to be likely to pose a specific and substantial risk of causing bodily injury or using violent force against the person of another. If a detainee is set for removal from the United States to a third country, courts should consider deterring the spread of the virus by discouraging deportation back to countries with inadequate health systems.

III. Courts Must Respond to this Pandemic and Operate Safely.

It is essential that courts have the tools to protect both public health and access to justice. Many courts have taken steps to adapt their operations to the current public health crisis. This includes expanding the use of remote and virtual services and attempts to institute social distancing guidelines within courthouses themselves. At a minimum, clients must have virtual and secure access to counsel immediately before, during, and after court proceedings.

In March, Congress appropriated money to help federal courts transition to conducting some court business online and through the phone. These are good first steps, and more must be taken. State and local courts, in particular, may also benefit from targeted support to implement similar services. In addition, courts would benefit from the development and distribution of best practices for remote court operations and services.

In-person court appearances will still be needed in some cases — particularly at pretrial and trial. Immediate steps must be taken to protect both personnel and parties appearing in court. The complexities presented by social distancing practices for court functions such as filings, trials, and oral arguments necessitate clear guidance crafted with both public health and legal experts.

IV. Courts Must Be Transparent and Provide Justice for All.

In this time of crisis, courts must be transparent with the public and all who need their services. The public must know what court services are still available to them, particularly for those in dangerous and sometimes deadly situations, such as domestic violence. Courts must provide this information through a variety of mediums to ensure public access, including in print, online, radio, and television when appropriate. In addition to public information campaigns, courts must also quickly update lawyers appearing regularly before certain courts, including defense attorneys, legal aid attorneys, and prosecutors, so they can best serve their clients.

The court system must also recognize that some parties may not have the means to use remote services due to financial strain or lack of technology, or may not have the resources to afford legal representation. In addition, people in need of court services may face additional barriers, such as language or disability status. Care should be taken to ensure those individuals are provided with the resources, accommodations, and time they need to access the courts.

As matters of great public interest are likely to be filed in court systems throughout the country as the pandemic continues, it is important that such filings are available to the public online and in paper. Supports that allow courthouses to establish online filing systems would promote transparency into America's justice system.

Finally, given the likely large-scale disruptions to the courts in the weeks and months ahead, systems must be equipped and ready to meet the demands of all whose cases have been put on hold — as well as the new cases that are likely to arise out of this pandemic. Courts should promote confidence in the legal system and communicate their plans to the public for handling the expected influx of cases.

Despite the challenges, the nation is counting on the judiciary to protect our civil and human rights and provide justice for all during this public health crisis.

Sincerely,

The Leadership Conference on Civil and Human Rights
National Women's Law Center, Fair Courts Task Force Co-Chair
People For The American Way, Fair Courts Task Force Co-Chair
ACCESS
Alianza Nacional de Campesinas
Alliance for Justice
American-Arab Anti-Discrimination Committee
American Association of University Women
Center for American Progress
Center for Law and Social Policy
Coalition for Disability Health Equity
Demand Justice

Drug Policy Alliance
Equality California
Equal Justice Society
Family Equality
Hindu American Foundation
Human Rights Campaign
Innocence Project
Lambda Legal
Lawyers' Committee for Civil Rights Under Law
Matthew Shepard Foundation
Muslim Public Affairs Council
NAACP
National Asian Pacific American Women's Forum
National Association of Social Workers
National Council of Jewish Women
National Disability Rights Network
National Health Law Program
National Organization for Women
National Center for Transgender Equality
National Employment Law Project
National Employment Lawyers Association
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